

## AGREEMENT

This Agreement is entered into this 2nd day of June, 1998, by and among Peacock Cafe, Inc. ("Restaurant"), Mr. and Mrs. Edward L. Emes, Jr., Meda Mladek and Gail Percy:

### WHEREAS:

1. The Restaurant is applying for a Retail Class "CR" License to be issued by the District of Columbia Alcoholic Beverage Control Board ("ABC Board") for premises known as 3251 Prospect Street, N.W., Application # 35728.

2. Mr. and Mrs. Emes own and live in property located at 3226 N Street, N.W. and 3230 N Street, N.W. Mrs. Mladek owns a property at 3232 N Street, N.W., immediately adjacent to the properties of Mr. and Mrs. Emes. Ms. Percy owns a property at 3236 N Street, N.W., next to the Mladek property. The backyards of the Emes, Mladek and Percy properties immediately abut the courtyard behind 3251 Prospect Street, N.W.

3. The parties hereto wish to enter into a written agreement pursuant to the ABC Board's regulations, including 23 DCMR §1513, whereby the Restaurant agrees to comply with the terms and conditions set forth below and Mr. and Mrs. Emes, Mrs. Mladek and Ms. Percy (together, the "Neighbors") will refrain from lodging protests to the referenced application of the Restaurant conditioned upon the Restaurant's compliance with the terms of this Agreement.

NOW, THEREFORE, for and in consideration of the following covenants, conditions and terms, the parties hereto agree as follows:

1. The Restaurant will not use the outdoor patio behind the premises known as 3251 Prospect Street, N.W., for any purpose, excepting only such necessary and incidental uses such as trash removal, deliveries and access for maintenance and repairs, to be done as quietly as practicable.

2. The Restaurant recognizes and agrees that the use of the said outdoor patio for any purpose, except the aforesaid necessary and incidental uses, would constitute "a substantial change in the nature of operation of the (Restaurant)" under the provisions of District of Columbia law and the ABC Board's regulations.

3. Notwithstanding the provisions of Paragraph 1 hereof, the Restaurant in any subsequent application may apply to the Board for permission to use the outdoor patio for any purpose specified in such subsequent application in accordance with District

of Columbia law and the ABC Board's regulations. Any such use shall be deemed to be "a substantial change in the nature of operation."

4. In any such application, the Restaurant (and any transferee) will have the burden of proving by clear and convincing evidence that such "substantial change" does not interfere with the Neighbors' peaceful enjoyment of their residential properties.

5. In addition to notices required by law or regulation, the Restaurant (and any transferee) shall give actual written notice to Mr. and Mrs. Emes, Mrs. Mladek and Ms. Percy on or before the day it files an application for permission to use the outdoor patio for any purpose.

6. The Restaurant agrees that nothing in its lease with Georgetown Prospect Place Associates Limited Partnership precludes the Restaurant from entering into and being bound by this Agreement.

7. So long as the Restaurant or any transferee of the Restaurant's license is operating a restaurant in the premises, the Restaurant and any such transferee agrees not to use any speakers or other devices to project or play music or any other noises in the courtyard behind 3251 Prospect Street, N.W., and to conduct its business in as quiet a manner as practicable taking into account the residential nature of the adjoining properties.

8. In consideration for and in reliance upon the commitments by the Restaurant herein, Mr. and Mrs. Emes, Mrs. Mladek and Ms. Percy hereby agree not to lodge protests to the Restaurant's pending application — conditioned, however, upon (a) the Restaurant's continuing compliance with the terms of this Agreement and (b) the incorporation of the terms of this Agreement in the ABC Board's order approving the Restaurant's application and license, as provided in 23 DCMR § 1513.

9. This Agreement shall bind and inure to the benefit of Mr. and Mrs. Emes, Mrs. Mladek, Ms. Percy and the Restaurant, and each of their respective heirs, successors and assigns and any transferees of the Restaurant's license. The parties intend that the restrictions and conditions of this agreement will become part of the liquor license itself and be binding on any subsequent transferee(s) and benefit any successors or assigns of the adjoining property owners in accordance with the ruling in *North Lincoln Park Neighborhood Ass'n v. ABC Board*, 666 A.2d 63 (D.C. 1995). The parties intend that this agreement shall continue in force notwithstanding any change in the law, by statute, court decision or otherwise, applicable to such agreements.

10. The Restaurant agrees that it will inform any transferee of its liquor license of the terms of this Agreement and condition any transfer of the license upon the transferee's agreement to be bound by this Agreement.

11. The parties hereto agree that any failure by the Restaurant (or any transferee) to comply with the foregoing commitments would constitute grounds for any other party to this Agreement to obtain appropriate legal or equitable relief, including without limitation an immediate court injunction, without the necessity of posting a bond, against use of the back courtyard area, and other relief as may be appropriate from the ABC Board or any other authority.

12. If it becomes necessary for any of the Neighbors to obtain relief from the courts or the ABC Board to enforce the terms of this agreement, the Restaurant (and any transferee) agrees to pay any legal fees incurred by the adjoining neighbor(s) in successfully enforcing this Agreement.

13. Nothing in this Agreement shall be used in any fashion to support any claim by any party not a signatory to this Agreement that it should be permitted to either obtain a liquor license or in any way use the back courtyard between the premises at 3251 Prospect Street, N.W., and the adjoining Neighbors' residences.

PEACOCK CAFE, INC.

BY

  
Maziar Favian,  
President

  
Edward L. Emes, Jr.

  
Elizabeth Dalton Emes

  
Meda Mladek

  
Gail Percy

# AGREEMENT

Made the 26<sup>th</sup> day of August, 2002; by and between Peacock Café, Inc., t/a Peacock Café (hereinafter "Applicant"), and The Citizens Association of Georgetown (hereinafter "Protestant").

WHEREAS, Applicant is the holder of a Retailer's Class CR license (Application No. 35728); and,

WHEREAS, Applicant filed with the District of Columbia Alcoholic Beverage Control (ABC) Board (hereinafter "the Board") an application to serve alcoholic beverages on a sidewalk café which was deemed a substantial change in the nature of the operation of the establishment; and,

WHEREAS, Protestant lodged with the Board a protest of said application; and,

WHEREAS, the parties subsequently have negotiated in an effort to resolve the issues raised by Protestant's objections to sidewalk café service of alcoholic beverages; and,

WHEREAS, the parties desire to enter into a voluntary agreement, pursuant to 23 D.C.M.R. Section 1513, commemorating their several agreements;

NOW, THEREFORE, the parties agree as follows:

1. Applicant shall adhere to the boundaries of the sidewalk café as indicated by the drawings approved by the Old Georgetown Board, Commission of Fine Arts and Public Space Committee. Seating capacity shall be for 24 persons, unless amended by the forgoing governmental agencies. The sidewalk café shall operate between the hours of 9:00 a.m. and midnight seven days. The applicant shall not provide any form of outdoor music or entertainment (whether on the sidewalk café or adjacent summer garden).

2. Demarcation of the outer boundaries of the approved sidewalk café shall be evidenced by metal spikes inserted flush to the sidewalk. Representatives of the parties will be in attendance when the boundary markers are inserted at the boundary points in the approved drawings. Pictures may be taken by the parties to memorialize the placement of the markers. Service on the sidewalk café will not occur prior to placement of the boundary markers, nor prior to issuance of a Public Space Permit.

3. Applicant agrees to maintain adequate supervision of the sidewalk café to ensure that tables, chairs and umbrellas remain inside the approved boundaries.

4. Applicant acknowledges that failure to adhere to the restrictions recited in paragraphs 1 through 3, inclusive, above, will constitute grounds for the Protestant to petition the Board for issuance of an Order to Show Cause, pursuant to 23 D.C.M.R. §1513.5, to gain Applicant's compliance with the terms of this Agreement.

5. This Agreement shall be deemed independent of any other agreement(s) Applicant has entered into with any other parties, and such other agreement(s) shall not be deemed superceded or modified hereby.

6. The parties request that the text of the instant Agreement be incorporated in an order of the Board granting Applicant's application for sidewalk café service of alcoholic beverages conditioned upon Applicant's compliance with the terms hereof.

7. In consideration of, and reliance upon, the foregoing commitments by Applicant, Protestant requests hereby that its protest of Applicant's application for sidewalk café service be deemed withdrawn.

IN WITNESS WHEREOF, the parties have affixed hereunto their hands and seals on the  
year and day first above written.

PEACOCK CAFE, INC.

By: 

Maziar Fariyar  
President

THE CITIZENS ASSOCIATION OF  
GEORGETOWN

By: 

Raymond J. Kukulski  
President

**BEFORE  
THE DISTRICT OF COLUMBIA  
ALCOHOLIC BEVERAGE CONTROL BOARD**

**In the Matter of:**

Peacock Café, Inc.  
t/a Peacock Cafe

Application for a Retailer's Class  
CR License (substantial change)  
at premises  
3251 Prospect Street, N.W.  
Washington, D.C.

Application no. 35728-02/113P  
2002-239

Karen Tammany Cruse, on behalf of the Citizens Association of Georgetown, Protestant

Dimitri P. Mallios, Esquire, on behalf of the Applicant

**BEFORE:** Roderic L. Woodson, Esquire, Chair  
Vera Abbott, Member  
Charles Burger, Member  
Laurie Collins, Member  
Judy Moy, Member  
Ellen Oppen-Weiner, Esquire, Member  
Audrey Thompson, Member

**ORDER ON WITHDRAWN PROTEST  
AND A VOLUNTARY AGREEMENT**

The request to serve alcoholic beverages on a sidewalk café was protested and came before the Board on July 31, 2002 in accordance with D.C. Official Code Section 25-601 (2000 Edition). Karen Tammany Cruse, on behalf of the Georgetown Citizens Association, filed timely opposition.

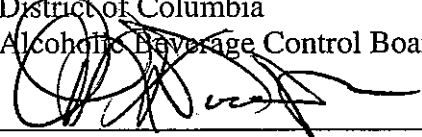
The official records of the Board reflect that the parties have reached an agreement that has been reduced to writing and has been properly executed and filed with the Board. Pursuant to the agreement, dated August 26, 2002, the protestant has agreed to withdraw the opposition, provided, however, the Board's approval of the pending application is conditioned upon the licensee's continuing compliance with the terms of the agreement.

Accordingly, it is this 18<sup>th</sup> day of September 2002, **ORDERED** that:


Peacock Café, Inc.  
t/a Peacock Café  
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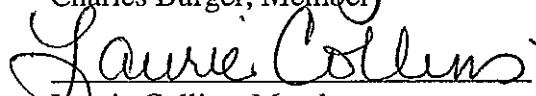
1. The opposition of Karen Tammany Cruse, on behalf of the Citizens Association of Georgetown is **WITHDRAWN**;
2. The request to serve alcoholic beverages on a sidewalk café for Peacock Café, Inc. t/a Peacock Café, 3251 Prospect Street, N.W., holder of a retailer's class CR license at 3251 Prospect Street, N.W., Washington, D.C., is **GRANTED**;
3. The above-referenced agreement between the parties, is **INCORPORATED** as part of this Order; and
4. Copies of this Order shall be sent to the Protestant and the Attorney for the Licensee.

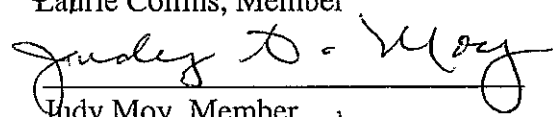
District of Columbia  
Alcoholic Beverage Control Board

  
Roderic L. Woodson, Esquire, Chair

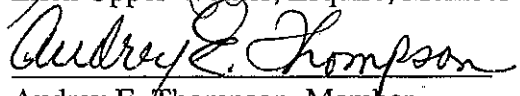
  
Vera Abbott, Member

  
Charles Burger, Member

  
Laurie Collins, Member

  
Judy Moy, Member

  
Ellen Oppenheimer, Esquire, Member

  
Audrey E. Thompson, Member